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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,474	01/23/2002	James L. Tracy	CM02045K	6374

7590 11/27/2007

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 11/27/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/055,474	Applicant(s) TRACY ET AL.
	Examiner Jeff Piziali	Art Unit 2629

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 27 August 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.


 Jeff Piziali
 20 November 2007

Continuation of 10. Other (including any explanation in support of the above items):

The appellants are thanked for the 'Brief on Behalf of Appellants Under 37 CFR 41.37 Response to Notice of Non-Compliant Brief' filed 27 August 2007. However, at least one non-compliant issue has been discovered in the aforementioned response, requiring attention before examination may continue.

37 C.F.R. § 41.37(c)(1)(v) requires the 'Summary of claimed subject matter' section of the brief must provide, "A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters."

MPEP § 1205.02 explains, "A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. While reference to page and line number of the specification requires somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters. If appellant does not provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), the Office will notify appellant of the defect in the brief and give appellant a time period within which to file an amended brief. See 37 CFR 41.37(d)."

The claimed invention is not mapped to "each independent claim involved in the appeal and for each dependent claim argued separately," so as to refer to the specification by page and line number and to the drawings, if any as required by 37 C.F.R. § 41.37(c)(1)(v).

The currently pending "Summary of claimed subject matter" section of the brief (see pages 4-5) neglects to completely map the argued subject matter of the claims to the instant specification and drawings. No explicit specification mapping of the claimed and argued subject matter has been provided for the claims. The appellant is respectfully encouraged to map all separately argued subject matter to the respective claims and portions of the specification and drawings.

The "Summary of claimed subject matter" section should map any claimed and argued subject matter to specific pending claims. For example, if the appellants wish to argue the subject matter of claim 1, then the "Summary of claimed subject matter" section should explicitly map/link each and every limitation in claim 1 to the specification by page and line number, and to the drawing, if any, by reference characters.

At least for such reasoning, the pending 'Brief on Behalf of Appellants Under 37 CFR 41.37 Response to Notice of Non-Compliant Brief' filed 27 August 2007 is deemed non-compliant.

Please note: The appeal brief has not been checked to the extent necessary to determine the presence of all possible non-compliance errors. If additional issues of non-compliance are discovered in a subsequent response, yet another Notification of Non-Compliant Appeal Brief will be necessitated. Appellants' cooperation is requested in correcting any other errors of which appellants may become aware in the brief.



Jeff Piziali
20 November 2007